

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**SOUTH MOUNTAIN CREAMERY,
LLC,**

Plaintiff

v.

**U.S. FOOD AND DRUG
ADMINISTRATION, et al.,**

Defendants

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No. 1:18-cv-00738

(Judge Kane)

ORDER

AND NOW, on this 25th day of February 2020, upon consideration of Defendants the U.S. Food and Drug Administration (“FDA”) and Commissioner Scott Gottlieb, M.D. (“Commissioner Gottlieb”) (collectively referred to herein as the “Federal Defendants”)’ motion to dismiss Plaintiff South Mountain Creamery, LLC (“Plaintiff”)’s claims against them pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction (Doc. No. 37), and in accordance with the Memorandum entered concurrently with this Order, **IT IS**

ORDERED THAT:

1. The Federal Defendants’ motion to dismiss (Docs. No. 37) is **GRANTED**;
2. Plaintiff’s claims against the Federal Defendants (Doc. No. 1) are **DISMISSED WITHOUT PREJUDICE** to Plaintiff’s right to reassert those claims if circumstances change to render those claims justiciable;
3. The Clerk of Court is directed to **TERMINATE** Defendants FDA and Commissioner Gottlieb as defendants in the above-captioned action; and
4. Plaintiff is directed to show cause, within ten (10) days of the date of this Order, why the Court should not dismiss Plaintiff’s claims against Defendant Russell C. Redding for lack of justiciability.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania